

REMARKS

Claims 15-29 are pending in the present Application. Claims 1-14 are cancelled, leaving Claims 15-29 for consideration. No amendments have been made.

Filed concurrently herewith is a Declaration submitted under 37 CFR §1.132.

Reconsideration and allowance of the claims are respectfully requested in view of the following remarks and the Declaration.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 15-22, 24 and 26-29 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 6,146,648 to Bret et al. (“*Bret*”).

Bret is generally directed to a softening lotion composition for use in an absorbent paper product. The purpose is to provide a softening effect on products such as tissue paper. *Bret* utilizes, in part, C16+ fatty alcohols and C24+ waxy esters in the softening formulation.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, or knowledge generally available in the art at the time of the invention, must provide some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). “A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). To find obviousness, the Examiner must “identify a reason that would have prompted a person of ordinary skill in the art in the relevant field to combine the elements in the way the claimed new invention does.” *Id.*

Applicants assert that a *prima facie* case of obviousness has not been established because, at the very minimum, *Bret* fails to teach or suggest all elements of Applicants’ independent Claim 15.

Independent Claim 15 is directed to a fibrous material that imparts a sense of freshness where the product contains, in part, at least one fatty acid ester with a C10-C14 carbon chain and a alcohol with a C10-C14 carbon chain.

With respect to independent Claim 15, Applicants contend that *Bret* fails to teach or suggest a fibrous material that imparts a sense of freshness where the product contains, in part, at least one fatty acid ester with a C10-C14 carbon chain and a alcohol with a C10-C14 carbon chain. In contrast, *Bret* describes a softening lotion composition for use in an absorbent paper product, which utilizes C16+ fatty alcohols and C24+ waxy esters; ranges that are well outside the C10-C14 carbon chain claimed by Applicants in independent Claim 15. Moreover, the goal of the Applicants' claimed product is to provide a sense of freshness, not a softening effect as described by *Bret*. The chemical differences between the two compositions account for the difference in characteristics, i.e., Applicants' freshness feeling versus the softening effect of the *Bret* composition.

However, the Examiner has stated, on Page 3 of the Office Action dated July 16, 2009 that

Regarding the fatty acid ester of claim 15 in the instant application, claim 4 of '648 patent states that the composition comprises one or more fatty alcohols which have 6 to 24 carbon atoms. Claim 4 further states a waxy ester of 6 to 24 carbon atoms. (emphasis added).

Further, the Examiner has stated, on Page 8 of the Office Action dated July 16, 2009 that

Regarding applicants argument that *Bret* only utilizes C16+ fatty alcohols and C24+ waxy esters, examiner would like to point out that 2144.09(I) of the MPEP states "A *prima facie* case of obviousness may be made when chemical compounds have very close structural similarities and similar utilities. "An obviousness rejection based on similarity in chemical structure and function entails the motivation of one skilled in the art to make a claimed compound, in the expectation that compounds similar in structure will have similar properties *In re Payne*" Furthermore, 2144.09(II) states "Compounds which are position isomers (compounds having the same radicals in physically different positions on the

same nucleus) or homologs (compounds differing regularly by the successive addition of that same chemical group, e.g., by -CH₂- groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties. In re Wilder.”

The Applicants call the attention of the Examiner to the Declaration pursuant to 37 CFR §1.132, filed concurrently with the present response. The Declaration provides an explanation of the differences between the composition used in *Bret* to impart a softness feeling and the composition disclosed by Applicants to impart a freshness feeling to the skin of a user. Furthermore, Applicants would like to respectfully remind the Examiner that, in considering the *Bret* patent, it is known in the art that there are significant chemical differences between a waxy ester having at least 24 carbon atoms and a fatty acid ester having a total of between 10 to 14 carbon atoms. Applicants respectfully further submit, and the Declaration supports, that the compositions do not possess similarities in function or properties, and therefore do not fall under the purview of obviousness as defined in MPEP 2144.09(I)-(II). In fact, it is the undesirable properties of *Bret*'s C16+ fatty alcohol and C24+ waxy ester composition, namely the softness feeling, which drove Applicants away from the teachings of *Bret* in order to find a composition capable of imparting the desired freshness feeling.

Moreover, unexpected results of a fibrous material that imparts a sense of freshness where the product contains, in part, at least one fatty acid ester with a C10-C14 carbon chain and a alcohol with a C10-C14 carbon chain are not related to intended use. Rather, the sense of freshness on the skin of a user by virtue of Applicants' claimed composition is related to a characteristic of the composition. It is this same distinctive characteristic, as a result of the use of a C10-C14 carbon chain fatty acid ester, rather than a C24+ waxy ester, which prevents a *prima facie* case of obviousness from being established. At the very minimum, *Bret* fails to teach or suggest all elements of Applicants' independent Claim 15.

In view of the foregoing, Applicants respectfully request withdrawal of these rejections.

Application No. 10/595,745
Response dated: October 16, 2009
Reply to Final Office Action of: July 16, 2009

Claims 23-26 stand rejected under 35 U.S.C. § 103(a) over *Bret* in view of U.S. Patent No. 6,270,878 to Wegele (“*Wegele*”). Claim 25 stands rejected under 35 U.S.C. § 103(a) over *Bret* in view of U.S. Patent No. 3,965,518 to Muoio (“*Muoio*”).

Wegele directed to wipes and *Muoio* directed to impregnated wipes do not make up for the deficiencies of *Bret* as described above. Given the claims 23-26 depend from and included all the limitation of independent Claim 15, Applicants respectfully request withdrawal of these rejections.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

CANTOR COLBURN, LLP

By: /Blaine A. Page/
Blaine A. Page
Registration No.: 58,800

Date: October 15, 2009
Cantor Colburn LLP
1180 Peachtree St. NE
Suite 2050
Atlanta, Georgia 30309
Telephone: (404) 607-9991
Facsimile: (404) 607-9981